

REMARKS

Favorable reconsideration of this application, in light of the preceding amendments and following remarks, is respectfully requested.

Claims 1, 2, 4-6, 14-16, 18-20, 28-30, 32-34, 42, 57, 58, 60-62 and 70-78 are pending in this application. Claims 1, 15, 29, and 57 are amended. Claims 71-78 are added.

Information Disclosure Statements

The Information Disclosure Statements filed on September 23, 2008, November 6, 2008, and January 12, 2009 contained references that were not considered by the Examiner. On page 2 of the Office Action, the Examiner states the references were not considered either because they were missing from the Applicant's submission or because they did not contain a legible English translation. If there are any references which the Examiner alleges were not submitted by the Applicant, the Applicant respectfully requests that the Examiner specifically indicate which references were not submitted so that the Applicant can respond appropriately.

Claim Objections

Claim 29 is objected to because line 5 which reads "utilizing control information which control reproduction of a main data, to reproduce the data," allegedly should read "utilizing control information, which controls reproduction of a main data, to reproduce the main data." The Office Action provides no reasoning for why the amendment to claim 29 should be made and under what grounds it is being objected to. If the Examiner intends to maintain this objection, the Applicant respectfully

requests that the Examiner provide reasons specifically pointing out why claim 29 is objected to.

Double Patenting

Claims 1 and 29 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 9 of copending Application No. 11/898,040 in view of U.S. Patent 5,892,797 to Deng ("Deng").

The Applicant respectfully notes that these rejections are provisional rejections and defers from responding to them at this time. The Applicant notes that the claims currently pending in the present application have been altered. Further, the scope of the claims contained in copending application no. 11/898,040 may change potentially rendering these double patenting rejections moot. The Applicant will defer from responding to these rejections until such time as the claims of copending application no. 11/898,040 are allowed.

Claim Rejections under 35 U.S.C. § 103

Claims 1, 2, 4-6, 14-16, 18-20, 28-30, 32-34, 42, 57, 58, 60-62, and 70 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Alleged Applicant Admitted Prior Art ("AAAPA") in view of Deng. The Applicant respectfully traverses this rejection.

According to the new Examination Guidelines for Determining Obviousness under 35 U.S.C. § 103 in view of the Supreme Court decision of *KSR International, Co. v. Teleflex, Inc.* it is stated that the proper analysis for a determination of obviousness is whether the claimed invention would have been obvious to one of ordinary skill in

the art after consideration of all the facts. The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reasons why the claimed invention would have been obvious. An Office Action must explain why the differences between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art. See 72 Fed. Reg. 57526, 57528-529 (Oct. 10, 2007).

The Applicant respectfully asserts that neither the AAAPA¹ nor Deng, either separately or in combination, teach, suggest, or otherwise render obvious all of the limitations set forth in the claims, nor has there been a clear articulation made of why the differences between the prior art and the claims would have been obvious to one of ordinary skill in the art. For example, independent claim 1 recites among other things “a second region for control information required for recording or reproduction of the main data and a bi-phased modulation data required for reproducing the control information or the main data.” The AAAPA does not teach or suggest the above quoted portion of claim 1. At best, in paragraph [0008] of the U.S. patent application publication for the above captioned case, the AAAPA describes encoding data in a wobble groove can be performed by bi-phase modulation. However, such a discussion does not teach, suggest or otherwise render obvious bi-phased modulation data required for reproducing the control information of the main data as recited above in claim 1.

Further, claim 1 also recites “said control information being encoded as wobbled pits wherein the bi-phased modulation data is recorded along with a wobbled pattern of the wobbled pits.” The AAAPA does not teach or suggest the above quoted

¹ The Applicant does not admit that all of the information listed in the background of the invention section of the patent application is prior art. However, even assuming for the sake of argument that the information listed in the background of the invention section of the present application were prior art, this information still would not render obvious the pending claims for the reasons discussed herein.

portion of claim 1. Rather, at best, as discussed in paragraph [0008] of the U.S. patent application publication for the above captioned case, there is a discussion of: "General information of a disc which needs to be permanently preserved may be recorded in the PIC area, which can be encoded in wobbled grooves of a track by HFM (high frequency modulation) method ... As shown in FIG. 2, encoding data into a wobbled groove can be performed by bi-phase modulation and thus recording." While the AAAPA may describe wobbled grooves, and describe a bi-phase modulation, nowhere does the AAAPA teach or suggest wobbled pits and the control information being encoded as wobbled pits wherein the bi-phase modulation data is recorded along with a wobbled pattern of the wobbled pits as recited in independent claim 1.

Deng does not cure the insufficiencies noted above of the AAAPA. Rather, Deng is cited only to disclose a method of bi-phased modulation known as Manchester encoding as disclosed in the Office Action. It is not alleged to cure the above noted insufficiencies of the AAAPA. For at least these reasons, the Applicant respectfully asserts that not all of the limitations recited in independent claim 1 are taught, suggested, or otherwise rendered obvious by the AAAPA and Deng whether taken separately or in combination.

For at least these reasons, the Applicant respectfully asserts that a *prima facie* case of obviousness has not been made. Therefore, the Applicant respectfully request that the rejections under 35 U.S.C. §103(a) of independent claim 1 and its dependent claims 2, 4-6, and 14 be removed.

The Applicant notes that language similar to that cited and discussed above with respect to independent claim 1 is also found in the remaining independent claims, claims 15, 29, and 57. The Applicant respectfully asserts that the AAAPA and Deng also fail to teach, suggest, or otherwise render obvious all of the limitations set

forth in independent claims 15, 29, and 57 and their dependent claims for at least the same reasons set forth above with respect to claim 1. The Applicant respectfully requests that the rejections under 35 U.S.C. §103(a) of claims 15, 29, and 57 and their corresponding dependent claims be removed.

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CONCLUSION

Accordingly, in view of the above amendments and remarks, reconsideration of the objections and rejections and allowance of each of the pending claims of this application is earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Terry L. Clark at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKY, & PIERCE, P.L.C.

By

A handwritten signature in black ink, appearing to be 'Terry L. Clark', written over a horizontal line.

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